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C O N F I D E N T I A L SECTION 01 OF 03 PORT LOUIS 000143

SIPDIS

AF/E FOR MARIA BEYZEROV  
AF/RSO FOR JUN BANDO AND MIKE BITTRICK  
S/P FOR PETER HARELL  
L FOR BUCHHOLS AND BINIAZ  
ANTAN FOR DAO  
NAIROBI FOR KUSLO  
PRETORIA FOR LEGAT

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TAGS: [MARR](#) [PREL](#) [MASS](#) [MOPPS](#) [SE](#)  
SUBJECT: PROBLEMS WITH PIRACY TRIALS IN SEYCHELLES - LACK  
OF LEGAL FRAMEWORK

REF: A. PORT LOUIS 132  
[1](#)B. PORT LOUIS 130  
[1](#)C. PORT LOUIS 137

Classified By: Charge d'Affaires Virginia Blaser for reasons 1.4 (b,d)

[1](#)1. (C) As of 7 May, the Seychelles had 23 suspected Somali pirates in detention on the main island of Mahe. These arrests were largely a result of international partners providing surveillance and pursuit capabilities. GOS legal and political leaders voice no consistent analysis on how to successfully prosecute the 23 arrested to date, and worry about the legal framework for future arrests. The UK, the EU, and the UN have promised legal, technical and financial support, but some observers fear the current detainees may not be successfully convicted. A myriad of options -- from creating new laws to using unrelated laws to charge the suspects -- are under consideration by GOS and other partners. In the meantime, the detainees will remain in custody and their cases may be facing repeated legal deferrals.

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UNCLEAR CURRENT LEGAL FRAMEWORK  
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[1](#)2. (C) According to Seychelles Attorney General (AG) Ronny Govinden, the GOS is finding it problematic to determine under what laws the government can process the 23 suspected Somali pirates now in Seychelles custody. Piracy laws are lacking, he said, so he may prosecute the detainees using the 2007 terrorism act (based on the fact that the Somalis "had ammunition and represented a threat to the economy"), or perhaps on immigration violations, illegal fishing, or a combination of the above. According to the AG, their current "best" piracy law would be local penal code that links their law to UK law and is in accordance with the "international law of piracy on the high seas." AG further noted the possibility of GOS using the 'Offenses at Sea' Act, which equates penalties and offenses committed on the high seas with those committed on land, for example armed robbery committed at sea would be treated the same as armed robbery committed on land. The evidence against the detainees is largely circumstantial, and makes it additionally difficult to prosecute. The cases they could build are reliant on the testimony of officials of foreign ships (French, Spanish, Indian), which may or may not be able to testify in a manner

which assists convictions. Information sharing is lacking, Govinden said with a great deal of frustration.

¶3. (C) In a 5 May meeting with the CDA, Anthony Fernando, the former Attorney General and now one of the four judges on the Seychelles Appeals Court, opined that the GOS may need to revert to the 1972 penal code to process the current Somali cases. Chapter 158, subsection 65 states: "Any person who is guilty of piracy or any crime connected with or relating or akin to piracy shall be liable to be tied and punished according to the law of England for the time being in force." There is some debate, Fernando said, whether the language "for the time being in force" means the UK law in place at the time the penal code was passed into law in Seychelles, or whether it means at the time a piracy crime is committed (i.e. modern laws). He feared that there is enough ambiguity in the law as pertaining to piracy, that a decent defense lawyer could defeat the AG's efforts for prosecution.

¶4. (C) In a May 5 meeting with EMBOFFS, Declan Barber, Director of the Financial Intelligence Unit (FIU) and close security consultant to the President (see ref B), opined that the GOS "absolutely does not" have appropriate anti-piracy laws in place.

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ANOTHER LEGAL ISSUE - CHILD PIRATES  
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¶5. (C) According to Barber, the GOS faces additional legal complications. For example, it may be impossible for the

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Government to try a minor for piracy; a serious question given that at least two of the suspect pirates are minors and one of them is only 15 years old. In the Seychelles, he said, it is usual for any minor suspected of either civil or criminal crimes to be released without trial. The head of the opposition, Wavel Ramkalawan, also commented on the "child pirate" issue, citing his concern that the AG publicly stated he would prosecute any pirate as an adult -- regardless of age. Ramkalawan opined that the child pirates engender a growing amount of sympathy among the Seychellois people, who regularly see photos in the press of the suspect pirates. Rumors that when found the pirates had little food, were near starving, had no proper clothes and were "forced onto khat could cause the public to see them -- especially the child pirates -- as victims, he said.

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INTERNATIONAL SUPPORT  
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¶6. (C) The President (ref C) and the AG both commented on support the GOS hopes to receive from the UN, EU, and UK, particularly for technical assistance regarding the legal framework addressing piracy. According to Amy Bowers, Vice Consul at the British High Commission in Seychelles, HMG recently sponsored a group of UK legal experts, to include Foreign and Commonwealth Office (FCO) lawyer Katherine Shepard, to review the current Seychellois laws regarding piracy. Although the final report was not yet completed (CDA asked for a copy when it was), Bowers commented that in her close out briefings with the UK team, they said the GOS lacks key assets for prosecution, including the lack of translators to assist during the trials. Interestingly, Bowers mentioned that she has reason to believe a British attorney, paid for by unknown persons in Somalia, would be coming to Seychelles to make up part of the defense team for some of the detained Somalis. The first legal review is scheduled to take place on 12 May. According to Bowers, the UN Office on Drugs and Crime (UNODC) also seeks to provide assistance for both the prosecution and defense, to supply and interpreter/translator for the hearings, and to expand the capacity of the prisons and the judges. Bowers concluded that in response to the

'wish list' of dipnotes received by all of the diplomatic missions, the UNODC stepped in to help coordinate the aid. In a separate meeting with AG, he also said that UNODC assistance was in the pipeline and that the Seychelles Ministry of Foreign Affairs (MFA) had the lead on coordinating this. If the international community wanted GOS cooperation for capturing and prosecuting pirates, such cooperation comes with a price tag, he stressed.

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PARTNERS OR QUASI PARTNERS?  
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17. (C) Across the board -- from the President on down -- the GOS officials opined that the GOS could not, and would not, provide trials for pirates caught on the high seas who were involved in incidents that did not have a direct connection to the Seychelles. GOS officials seemed concerned about the GOS's legal and logistical capacity, and they voiced concern that partner nations (i.e. the Europeans) may be considering a way around this. For example, both Jean Paul Adam, Secretary of State to the Presidency, and Leader of the Opposition Ramkalawan, recounted their suspicions that one of three groups arrested in Seychelles EEZ was the same group picked up a day or so previously by the French military. Both suspected the French had picked the pirates up, then brought them into the Seychelles EEZ before letting them go to be "found" by locals and thus fall to GOS to process.

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WHAT ABOUT NEW LAWS  
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18. (C) According to Barber, he has arranged an Irish expert to travel to the Seychelles to begin assisting the GOS in

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drafting a new and more potent piracy law. Barber was optimistic that it would only take a week or so to get a new law drafted, and a relatively short period of time after to get such a law passed by the Parliament. The AG was a bit less optimistic a new law could be written and passed by Parliament so quickly; he opined it could take several months.

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COMMENT  
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19. (C) From our meetings throughout the GOS, it appears clear that the Seychelles authorities remain uncertain how to legally move forward on the current piracy cases. They likely lack the laws and the evidence to obtain a piracy conviction.

They will be seeking some convictions, however, and some sectors report that the GOS hopes to have pirates on hand to exchange for some of the Seychellois still being held by pirates in Somalia (additional report to follow). The Seychellois are looking for both financial and technical support from partner nations to assist them in these and future trials.

BLASER